

The opinion in support of the decision being entered today was **not** written
for publication and is **not** binding precedent of the Board.

Paper No. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STUART W. GRIBBLE

Appeal No. 2002-1817
Application No. 09/432,862

ON BRIEF

Before ABRAMS, STAAB, and NASE, Administrative Patent Judges
ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-10.
Claims 11-15 have been allowed.

We AFFIRM.

BACKGROUND

The appellant's invention relates to a pet door. An understanding of the invention can be derived from a reading of exemplary claim 1, which was been reproduced below.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Smith	4,043,079	Aug. 23, 1977
Ruff	4,255,902	Mar. 17, 1981
De La Cerda <u>et al.</u> (De La Cerda)	5,992,096	Nov. 30, 1999

Claims 1-3, 5-7, 9 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith in view of De La Cerda.

Claims 4 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith in view of De La Cerda and Ruff.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the Answer (Paper No. 8) and the first office action (Paper No. 4) for the examiner's complete reasoning in support of the rejections, and to the Brief (Paper No. 7) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The appellant's invention is directed generally to pet doors and particularly to an improved pet door construction in which the door pivots in pendulum fashion between open and closed positions and is provided with a flexible seal around its entire perimeter to minimize heat transfer through the door when it is in the closed position.

The invention so set forth in claim 1 in the following manner:

1. A pet door for installation in an opening through a dwelling barrier, said pet door comprising:

a frame support connected to said dwelling barrier and providing a rectangular passageway through said opening in said barrier;

a movable closure having a pair of spaced apart, closure panels secured to top and bottom edge members and to spaced apart side edge members, said closure being slightly smaller in height and width than said rectangular passageway of said frame support, and being substantially filled with insulation within the space defined by said closure panels and said edge members;

a resiliently flexible seal connected to said top, bottom and side edge members to movably and sealably engage said rectangular passageway of said frame support; and

a pivot axle connecting said movable closure intermediate the top and bottom thereof to said frame support;

whereby said closure may be influenced to swing inwardly and outwardly within said passageway on said pivot axle and, when at rest, said flexible

seal contacts said passageway around the entire perimeter of said closure.

The examiner has rejected this claim under 35 U.S.C. § 103(a) as being obvious¹ in view of the teachings of Smith and De La Cerda. Specifically, the examiner has found that all of the subject matter recited in claim 1 is disclosed or taught by Smith except for the seal extending around the entire peripheral outer edge of the closure and the use of insulation in between the panels of the closure. However, it is the examiner's view that it would have been obvious to one of ordinary skill in the art to modify the Smith pet door by providing the claimed seal and insulation in light of the teachings of De La Cerda, "to provide a more thorough barrier against convective heat loss" (Paper No. 2, page 3). The appellant argues in opposition to this conclusion that De La Cerda does not disclose a sealing weather strip around the entire perimeter of the door and if such were installed the De La Cerda door would be inoperative, and therefore the only suggestion for combining the references in the manner proposed by the examiner is found in the appellant's own disclosure (Brief, pages 3 and 4).

¹The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988).

Smith discloses a pet door having a movable closure 10 that swings from a pivot axle 33, in the same manner as the closure recited in claim 1. The closure comprises a pair of spaced panels 29 and 30. While the closure is provided with a weather strip 40 engaging the top portion of the frame within which the closure is mounted, such is not disclosed on the sides or the bottom of the closure. Thus, Smith fails to teach providing a seal on the bottom and side edges of the closure. Nor does Smith disclose insulation between the spaced panels of the closure.

The pet door disclosed by De La Cerda has spaced apart panels between which insulation 52 is installed (Figure 5). The reference goes on to state that “[in] order to provide further thermal efficiency, a thermal barrier 58, “formed of for example nylon pile, extends about the peripheral outer edge of the pet door 8” (column 4, lines 20-22; emphasis added). Considering nylon pile to be “resiliently flexible,” we agree with the examiner that one of ordinary skill in the art would have understood from the explicitly stated teaching of De La Cerda that equipping a swinging pet door with a resiliently flexible seal along its peripheral outer edge, that is, its top, bottom and side edges, would provide the advantage of improving the thermal efficiency of the closure. We further agree that in view of the teaching of De La Cerda it would have been obvious to provide insulation between the panels of the Smith pet door.

It therefore is our opinion that the combined teachings of Smith and De La Cerda establish a prima facie case of obviousness with regard to the subject matter recited in

claim 1, and we will sustain the rejection. Since the appellant has chosen to group claims 2, 3, 5-7, 9 and 10 with claim 1 (Brief, page 2), the like rejection of these claims also is sustained.

While we have carefully considered the appellant's arguments, they have not persuaded us that this rejection should not stand. It is true that the thermal barrier insulation denoted by the numeral 58 is not shown in the De La Cerda drawings. However, because this reference specifically states that the thermal barrier extends around the peripheral outer edge of the closure for the purpose of improving thermal efficiency, we nevertheless are of the view that the patent clearly conveys to one of ordinary skill in the art the advantage of providing a thermal barrier on all four edges of the pet door movable closure. Furthermore, the appellant's argument that extending the seal around the top edge of the closure in the De La Cerda door would render the closure inoperative because of the construction of the hinge is merely conjecture, and cannot be accorded such weight as to nullify the explicit statement made that the seal should be on all edges. In this regard, we further note that the teachings of De La Cerda are being applied to Smith, which already discloses a seal at the top edge of the closure panel.

Claims 4 and 8 add to claims 1 and 7, respectively, the requirement that the seal include deformable double wiper blades contacting the passageway of the support frame. The examiner has taken the position that in view of the teachings of Ruff, it

would have been obvious to utilize such a seal in the modified Smith door (Paper No. 2, page 4). We agree.

Ruff discloses a weather sealing assembly for doors which comprises deformable double wiper blades 25 and 26 mounted on an edge of the door. The blades are “relatively pliable” and make “sealing contact” with the threshold 40 of the door frame (column 3, lines 20-22; Figures 2 and 3). The patent explains that this arrangement “was found to resist penetration of water and the passage of air” when subjected to a wind of 33.8 mph with water being applied to the door at a rate of 5 gal/hr/sq. ft of door for 15 minutes (column 3, line 31 et seq.). From our perspective, one of ordinary skill in the art would have learned from Ruff that a double wiper blade seal offers the advantage of a high resistance to the penetration of water and air. This being the case, it is our opinion that it would have been obvious to provide the modified Smith pet door with such a seal. We therefore conclude that the combined teachings of Smith, De La Cerda and Ruff establish a prima facie case of obviousness with regard to the subject matter recited in claims 4 and 8, and we will sustain the rejection of these two claims.

We acknowledge that the advantage of the double wiper blade seal that is stated in Ruff is not the same as that for which the appellant has employed it. However, prior art teachings relied upon need not disclose the same advantage that the appellant alleges, for all that is required is that there is a reasonable suggestion to combine the

CONCLUSION

The decision of the examiner is affirmed.

AFFIRMED

NEAL E. ABRAMS
Administrative Patent Judge

LAWRENCE J. STAAB
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

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